RESOLUTION NO. 132-2009

Resolution Approving The Programs And Expenditures Of The Wichita Falls Economic Development Corporation, A 4A Development Corporation, Including, But Not Limited To, The FY 2009-2010 Budget

WHEREAS, TEXAS LOCAL GOV'T. CODE §501.073 provides:

TEXAS LOCAL GOV'T. CODE §501.073. Supervision By Authorizing Unit

- (a) The corporation's authorizing unit will approve all programs and expenditures of a corporation and annually review any financial statements of the corporation.
- (b) A corporation's authorizing unit is entitled to access to the corporation's books and records at all times.

WHEREAS, the Board of Directors of the Wichita Falls Economic Development Corporation (WFEDC), a Texas 4A development corporation, enacted programs and expenditures, including its annual budget, in August and September of 2009, as described herein; and

WHEREAS, the City Council finds that it has reviewed the financial statements of the WFEDC, and has determined that the funds designated for "administration," including all of the funds for the Chamber of Commerce and Sheppard Military Affairs Committee, are for the administration of projects intended to create and promote primary jobs in the City of Wichita Falls.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA FALLS, TEXAS, THAT:

The Budget of the Wichita Economic Development Corporation, attached hereto as Fiscal Year 2009-2010 Budget, as modified to incorporate the latest adopted programs and expenditures, is hereby approved. The programs and expenditures described in WFEDC Programs and Expenditures adopted in August & September of 2009 are hereby approved.

PASSED AND APPROVED this the 6th day of October, 2009.

MAYOR PROTEN

ATTEST:

ity Clerk

	4A Economic Development Corporation
Fiscal Year 2009-2010	Budget

Short Financial Statement

Revenue Sales Taxes Other Rents Reimbursements Interest Sale of Property Completed Projects Insurance Ad Valorem Tax PPG (10/12/04, 10/19/04) Carter Copter Mesa Group Biggs & Matthews Phase 1 Business Park (10/12/04, 10/19/04) B.P. Development Consultant (1/3/05, 1/18/05) 1/18/05) Excalibur Paint & Coatings (9/6/05, 9/20/05) Wichita Clutch #2	8/3/09 EY06 Budget \$2,941,098.00 \$380,000.00	FY 06 Actual \$3,212,034.00 \$737,546.00 \$12,867.00 \$15,501.00 \$1,505,080.00 \$25,000.00 \$66,500.00	FY07 Budget \$3,265,727.00 \$106,800.00 \$31,734.00 \$31,734.00 \$31,734.60	EY07 Actual S3,344,755.00 \$106,800.00 \$910,876.00 \$1,109,934.00 \$1,109,934.00 \$1,109,934.00 \$1,109,934.00 \$1,109,934.00	EV08 Budget \$3,344,369.80 \$106,800.00 \$31,734.00 \$4,182,903.80 \$31,734.00	FY08 Actual Actual \$33,558,983.00 \$108,258.00 \$143,887.00 \$145,618.00 \$1,210.00 \$28,030.00	EY09 Budget \$3,551,795.33 \$106,800.00 \$27,614.56 \$700,000.00 \$1,210.00 \$27,615.00	EY09 Actual \$2,040,911.00 \$80,000.00 \$159,268.00 \$2,280,179.00 \$2,780,179.00	EV10 Budget \$3,551,509.00 \$106,800.00 \$27,615.00 \$91,200.00 \$1,210.00 \$1,210.00
Texas Recreation ATCO Structures	\$202,400.00	00 1014 104 00		\$165,000.00		\$349,500.00			
(12/19/05, 12/20/05) Wichita Power Train Texas Transland	\$1,900,000.00	\$1,214,104.00	\$45,000.00 \$91,000.00	\$22,000.00		\$76,000.00			

Texas Transland

Revenues Less Expenses	\$555,698.00	\$916,453.00	\$2,013,196.00	\$2,170,318.00	<u>\$1,876,828.80</u>	\$2,949,357.00	<u>\$2,949,357.00</u>	\$1,614,405.00	<u>-\$1,139,156.00</u>
Beginning Cash Balance	\$15,999,259.00	\$15,999,259.00 \$15,999,259.00	\$16,915,712.00	\$16,915,712.00 \$16,915,712.00	\$19,086,030.00	\$19,086,030.00	\$19,086,030.00 \$22,035,387.00 \$22,035,387.00	\$22,035,387.00	\$23,649,792.00
Ending Cash Balance	<u>\$16.554.957.00</u> \$16.915,712.00	\$16,915,712.00	\$18,928,908.00	\$18,928,908.00	\$20,962,858.80	\$22,035,387.00	\$22,035,387,00 \$24,496,176,43	\$23,649,792.00	<u>\$22,510,636.00</u>
Reserved For Encumbrances	\$3,618,121.00	\$5,458,268.00	\$5,458,268.00	\$2,083,364.00	\$2,083,364.00	\$2,985,317.00	\$2,985,317.00	\$4,073,134.46	\$3,468,028.00
Unreserved Fund Balance	\$12,936,836.00	\$12,936,836.00 \$11,457,444.0 <u>0</u>	\$13,470,640.00	\$17,002,666.00	<u>\$17,002,666.00</u> <u>\$18,879,494.80</u>	819,050,070,00	\$19,050,070,00 \$21,510,859.43	\$19,576,657.54	<u>\$19,042,608.00</u>

Performance Agreement between

The Wichita Falls Economic Development Corporation

and

Carter Air Vehicles, LLC

for

Incentives to Provide Primary Jobs in Wichita Falls, Texas

This Performance Agreement (this "Agreement") is entered into on _______, 2009, by and between the Wichita Falls Economic Development Corporation ("WFEDC"), a Texas development corporation authorized under the Texas Development Corporation Act of 1979 Section 4A, (the "Act"), and Carter Air Vehicles, LLC, a Texas limited liability company having an office at 5720 Seymour Highway, Wichita Falls, Texas, 76310 ("Carter").

Whereas, the Act authorizes the WFEDC to contract with companies whose activities are defined as manufacturing using the 311-339 of the North American Industry Classification System (NAICS);

Whereas, Carter is in the final negotiation of a license agreement with a large company in the business of designing and manufacturing aircraft, which includes the option to purchase by such company of two PAV prototypes using slowed rotor concept technology (the "License Agreement");

Whereas, Carter cannot satisfy obligations under the License Agreement utilizing the office and production areas currently occupied at 5720 Seymour Highway;

Whereas, Carter cannot satisfy obligations under the License Agreement without an investment of approximately \$4,000,000 to be used as operating capital to establish a new manufacturing operation;

Whereas, Carter is committed to establishing in Wichita County, Texas a new company expressly for the purpose of aircraft manufacturing with the capacity to produce up to 300 aircraft per year resulting in the potential of up to 300 New Positions;

Whereas, the parties agree that this Agreement complies with Tex. Loc. Gov't Code Ann. §§ 501.156 through 501.158, by: (1) being intended to benefit the WFEDC, (2) providing that default on this Agreement is enforceable as provided by Tex. Loc. Gov't Code Ann. § 501.157, in addition to retaining other enforcement remedies provided by Texas law, and (3) providing a schedule as stated in this agreement for additional jobs and capital investment as consideration for direct incentives provided herein and providing for repayment obligations; and

Whereas, the parties desire to set forth the proposed terms of a definitive agreement to be entered into between the WFEDC and Carter providing for a loan by the WFEDC to Carter;

Now, Therefore, subject to the approval of the Wichita Falls City Council and the execution of subsequent agreements (lease and note or investment agreement) as provided below, the parties agree as follows:

1. <u>Definitions</u>. As used in this Agreement, the following terms have the following meanings:

"Annual Payroll" means with respect to the applicable 12 consecutive month period, Carter's total cash payroll for (i) all of its full-time employees residing in Wichita County, Texas and (ii) 10% of all of its full-time employees residing outside of Wichita County, Texas.

"New Positions" means full-time positions employed by Carter in Wichita County receiving full-time wages paid by Carter. Positions shall not be considered New Positions if they (1) were employed by Carter on the day this Agreement is executed, (2) failed to increase the total number of current, full-time employees of Carter in Wichita County, or (3) merely replaced full-time positions from an earlier reduction in the number of full-time employees.

"Payroll Statement" means a written statement setting forth (i) the Annual Payroll, (ii) the amount of wages paid to each full-time employee, and (iii) the zip code of residence of each full-time employee.

"Personal Air Vehicle" or "PAV" means a manned or unmanned aircraft manufactured by Carter.

"Successful Flight" means a self-powered, takeoff and landing from ground for a minimum duration of 30 minutes.

2. <u>Manufacturing Facility</u>. Upon Carter's written request after execution of the License Agreement, the WFEDC will provide Carter with real property and finished buildings in Wichita County including suitable for offices and manufacturing of aircraft not to exceed 25,000 square feet (the "<u>Real Property and Improvements</u>") through one/or both of the options set forth in subsections (a) and/or (b) below:

(a) Lease Existing Building Lease

If Carter and the WFEDC mutually agree on suitable space in which Carter can begin manufacturing operations, and Carter enters into a lease agreement for such space (the "Existing Building Lease"), the WFEDC will reimburse Carter 99% of the total rent for each of the first two years of the term of the Existing Building Lease. Beginning in the third year of the Existing Building Lease and continuing each year until the tenth year, the WFEDC shall reimburse Carter for the total rent, but the percentage of rent to be reimbursed shall be reduced by 15% of the original amount (e.g., the WFEDC shall reimburse Carter for 84% of the total rent for the third year of the term of the Existing Building Lease). If this building is located outside of Wichita Falls, the location must be approved by the Board of Directors of the WFEDC and will be

subject to an agreement between the WFEDC and the governing body of the jurisdiction in which the building is located pursuant to Tex. Loc. Gov't Code Ann. § 501.159.

(b) Improvements to Leased Space

Upon Carter moving from 5720 Seymour Highway, Wichita Falls, Texas, into another location to achieve the milestones mentioned in Section 3, the WFEDC will advance Carter up to \$250,000 for necessary improvements to a leased space. The final amount up to \$250,000 will not be subject to a payback obligation, and will not be part of the loan, but will reduce the \$4,000,000 otherwise in this agreement. If this building is located outside of Wichita Falls, the location must be approved by the Board of Directors of the WFEDC and will be subject to an agreement between the WFEDC and the governing body of the jurisdiction in which the building is located pursuant to Tex. Loc. Gov't Code Ann. § 501.159.

The WFEDC will endeavor to ensure that the site and manufacturing facility established pursuant to this <u>Section 2</u> is ready for occupancy immediately after the first Successful Flight (no wings) of the prototype currently in production.

3. Additional Investment.

Additionally, the WFEDC will make available to Carter operating capital in the form of a loan (the "Operating Capital Loan" and together with the Real Property Loan, the "Loan")). The amount of the funds available to Carter under the Operating Capital Loan shall equal \$4,000,000 in cash less the total amount of reimbursements for a leased building as set forth in Section 2(a). Payments will be issued in eight equal amounts each of which shall be advanced to Carter upon its request upon completion of each of the following milestones:

- (a) Successful Flight of second prototype of PAV (no wings) (currently under construction February 2010);
- (b) Purchase Order received from a viable business entity for first pre-production PAV (March 2010);
- (c) Successful Flight of second prototype PAV (with wings) (Sept. 2010);
- (d) Purchase Order received from a viable business entity for second preproduction PAV (Oct. 2011);
- (e) Successful completion of second prototype PAV flight tests (Dec. 2011);
- (f) First pre-production PAV flies (Dec. 2011);
- (g) Carter employs 20 New Positions (Jan. 2011); and
- (h) Carter employs 50 New Positions (June 2011).

Timelines in parentheses above are merely non-binding projections. Carter will have up to four years after the date of the definitive agreement to become entitled to funding under the Operating Capital Loan for meeting the aforementioned milestones.

- 4. <u>Repayment of the Loan</u>. Beginning four years after the date of the definitive agreement, Carter will repay the Loan under the following terms:
- (a) The total amount of funds advanced to Carter under the Loan will be paid back to the WFEDC in equal quarterly installments beginning the first day of the 4th year after execution of the definitive agreement and continuing with quarterly payments through the last day of the 7th year (the "Repayment Period").
- The WFEDC will reduce each quarterly Loan payment due by an unduplicated credit of 10% of the increase in Annual Payroll. A Payroll Statement shall be delivered upon execution of this Agreement (the "Initial Payroll Statement") and with each quarterly payment due during the Repayment Period and shall determine whether Carter is entitled to a reduction of the then due payment in an amount equal to 10% of any increase in Annual Payroll. The Initial Payroll Statement shall set forth the Annual Payroll in Wichita County for the 12-month period preceding the execution of this Agreement. The second Payroll Statement shall be delivered to the WFEDC with payment of the first quarterly payment due during the Repayment Period (the "First Payment") and shall set forth the Annual Payroll in Wichita County for the preceding 12 month period and the difference between such Annual Payroll and the Annual Payroll set forth in the Initial Payroll Statement (the "Initial Payroll Increase"). The First Payment shall be reduced by an amount equal to 10% of the Initial Payroll Increase in Wichita County. Each increase in Annual Payroll in Wichita County set forth in subsequent Payroll Statements shall reduce the applicable quarterly payment due by an amount equal to 10% of the amount of any increase over the payroll in the Initial Payroll Statement. It is the intent of this agreement to award the 10% credit for payroll increases that are sustained for at least a year, but subsequent maintenance of those jobs or payroll level shall NOT entitle Carter to additional credits from the loan. Further, if a position is subsequently eliminated and re-created, it shall NOT entitle Carter to any additional payroll credit as a result of the re-creation of previously established payroll levels.
- (c) Prior to receiving funds pursuant to this Agreement, Carter shall execute a separate note or investment agreement more specifically describing the repayment and/or investment terms set forth herein. The required security and other terms will be determined by negotiation between the parties. Carter and the WFEDC acknowledge that this Agreement is prepared for the purpose of facilitating the drafting of a definitive agreement regarding WFEDC's investment and that this Agreement does not constitute a legally binding agreement between the parties.
- (d) The interest rate on funds provided under the Loan will be 0% prior to payment default and 5% per year simple interest after payment default. Carter may prepay the Loan at any time without penalty. Carter shall have no further obligations to the WFEDC upon payment in full of the Loan.

- Upon default of any payments hereunder, the WFEDC may, at its option, (e) receive equity interest in Carter, Carter Aviation Technologies, LLC or Carter Aerospace Development, LLC (collectively, the "Carter Companies") during the term of this Agreement. The value of the equity interest received shall equal the defaulted payments due under the Loan. The equity interest shall be valued at the greater of: (i) the last sale price of such interest, plus 20%, (ii) book value of the Carter Companies, or (iii) fair market value of the Carter Companies. Book value and fair market value of the Carter Companies shall be based on an opinion from a certified public accountant selected by the parties. This option to purchase an equity interest in the event of default will be described in the note provided subsequently hereto, and the funds provided hereunder will be subject to each of the Carter Companies executing investment agreements binding said companies to the equity issuance option. More specific valuation methods may be required by the WFEDC in the note and security document executed at the time of execution of the Loan documents. The WFEDC may choose to convert all, some or none of any particular note's defaulted payment to equity pursuant to this paragraph and the terms provided in the note or other Loan document.
- 5. <u>Use of Proceeds</u>. Carter agrees to use all of the funds received pursuant to this Agreement for (or as reimbursement for) the "costs" (as that term is defined in Tex. Loc. Gov't Code Ann. § 501.152) of this "project" related to the creation or retention of primary jobs as provided by Tex. Loc. Gov't Code Ann. § 501.101.
- 6. <u>Violations</u>. In accordance with Tex. Gov't Code Ann. §§ 2264.001 through 2264.101, Carter does not and will not knowingly employ an undocumented worker during the term of this Agreement in violation of Texas or federal law. If, during the term of this Agreement, Carter or a branch, division, or department of Carter is convicted of a violation under 8 U.S.C. Section 1324a(f), Carter shall repay the amount of the public subsidy with the addition of interest at the interest rate described in each note as required by Tex. Gov't Code Ann. § 2264.053, not later than the 120th day after the date the WFEDC notifies the business of the violation. In addition, if Carter ceases manufacturing operations in Wichita County during the life of the loan, re-locates its manufacturing operation to a county other than Wichita County during the life of the loan, or fails to continuously maintain the positions created pursuant to Section 3 during the life of the loan, then Carter shall be obligated to pay the 5% annual interest rate described in Section 4(d) of this agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day of <u>October</u>, 2009.

WICHITA FALLS ECONOMIC DEVELOPMENT CORPORATION

Gary Shores, President

CARTER AIR VEHICLES, LLC

Bv.

Jay W. Carter, Jr., Preside